

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN A. JONES, on : C.A. No.
behalf of himself and :
others similarly situated, :
 :
Plaintiffs, :
 :
vs, . :
 :
STERLING INFOSYSTEMS, INC., :
 :
Defendant. : 14-CV-03076-VEC

- - -

THE VIDEOTAPED DEPOSITION OF
CURT SCHWALL
THURSDAY, NOVEMBER 6, 2014

- - -

The videotaped deposition of CURT SCHWALL,
called by the Plaintiffs for examination pursuant
to the Federal Rules of Civil Procedure, taken
before me, the undersigned, Elaine S. Newlin,
Notary Public within and for the State of Ohio,
taken at the Regus Business Center, 6100 Oak
Tree Boulevard, Suite 200, Cleveland, Ohio,
commencing at 8:50 a.m., the day and date above
set forth.

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CURT SCHWALL

1 APPEARANCES:

2 On behalf of the Plaintiffs:

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8 On behalf of the Defendant:

9 Michael O'Neil, Esquire
10 Reed Smith, LLP
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13 ALSO PRESENT:

14 Paul Szilagy, Videographer
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25

CURT SCHWALL

1 knowledgeable manner?

2 A Yes.

3 Q All right. Are you familiar generally with
4 Sterling Infosystems' procedures for obtaining
5 criminal record information from the State of
6 New York?

7 A Yes.

8 Q Can you identify for me the method by which
9 Sterling obtains criminal record information
10 from the State of New York?

11 A Yes.

12 Q Please do.

13 A Information's obtained through the Office of
14 Court Administration using their electronic
15 process for requesting information.

16 Q How long has Sterling Infosystems used that
17 method for obtaining criminal records
18 information from New York?

19 A Since at least prior to the acquisition of
20 Acxiom Information Security Services.

21 Q So that was -- that method was in place at
22 least going back as far as February 2012?

23 A Yes.

24 Q Are you familiar with something called the
25 Argentum CRIM fulfillment process?

CURT SCHWALL

1 document and can identify it.

2 A I've seen this document before.

3 Q And what is it?

4 A It is the New York Courts Criminal History
5 Record Search access process.

6 Q And does this document, does Sterling 18
7 outline, at least in part, the -- the source of
8 Sterling's criminal records that it uses for
9 public records reports in New York?

10 A Yes. It outlines what we use and every other
11 consumer reporting agency who orders New York
12 statewides.

13 Q And when you mention that the method and the
14 process that Sterling uses for obtaining
15 New York Court records was an electronic
16 process, is this the source that you're
17 referring to, the New York Courts.gov?

18 A The source of the information is the New York
19 Office of Court Administration.

20 Q And that's -- that's what's referred here as
21 OCA?

22 A Correct.

23 Q So is it -- is it fair for me to state that
24 whenever Sterling sells one of its clients a
25 background check which includes a public record

CURT SCHWALL

1 obtained from the State of New York, Erie
2 County, Lancaster Village Court based on the
3 information contained in the report that
4 Sterling Infosystems sold Halstead about
5 Mr. Jones.

6 I asked you before about whether you knew
7 what a Certificate of Disposition was. Does
8 this at all refresh your recollection or assist
9 you in answering the question of what a
10 Certificate of Disposition is?

11 A I've seen documents like this.

12 Q So are you aware that documents like this are
13 available in the public record from New York
14 that anybody can get?

15 MR. O'NEIL: Objection.
16 Vague.

17 Are you suggesting that these are
18 existing in the public record, Mr. Francis, or
19 are you --

20 MR. FRANCIS: Well, number
21 one, I'm asking the witness. If you have an
22 objection, you can place an objection on the
23 record.

24 MR. O'NEIL: Well, vague.
25 Vague.

CURT SCHWALL

1 MR. FRANCIS: Fine.

2 MR. O'NEIL: Incomplete

3 hypothetical.

4 Q You can answer.

5 A It's possible to get these types of documents.

6 Q So in connection with this case, you're not
7 saying that Sterling, unlike my office, is
8 unable to get a record like this, like a
9 Certificate of Disposition about a particular
10 record, correct?

11 A Not unable.

12 MR. FRANCIS: Are we on 20?

13 THE REPORTER: We are on 20.

14 MR. FRANCIS: Would you
15 mark that as 20, please?

16 There you go, Mike.

17 MR. O'NEIL: Thank you.

18 - - - - -

19 (Sterling Exhibit No. 20 was marked.)

20 - - - - -

21 Q Sir, I'm handing you another document. This
22 has been marked Sterling 20 and ask you if you
23 recognize what this is. This is a document
24 that was also produced to us in this
25 litigation.

CURT SCHWALL

1 A Generally --

2 Q Currently.

3 A Generally, yes.

4 Q Okay. Good.

5 All right. So if you look at the second
6 question, "How does OCA's Criminal History
7 Record Search program work?", it reads in
8 answer to that question, "You need to have the
9 individual's full name and date of birth. You
10 can submit your search via OCA's on-line
11 application called Direct Access or you can
12 complete the CHRS application form which can be
13 downloaded from the New York Courts website,"
14 and it gives the URL. Do you see that?

15 A Yes.

16 Q So does Sterling use the online application or
17 does it use the CHRS application form?

18 A I'm not sure which process we use. It's
19 electronic communication with the OCA.

20 Q Okay. So one of my questions was do you know
21 whether there's any difference between the
22 information that you get when you use the
23 online application versus the CHRS application
24 form.

25 MR. O'NEIL: Objection.

2	0	You can answer.
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4 Q Do you know how that -- how the process works
5 of using the form? Like what do you have to do
6 in order to use the form and the timeframe
7 turnaround?

9 Q So are you -- do you know whether or not
10 Sterling uses the online application or the
11 form?

CURT SCHWALL

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q All right. And would you turn to two exhibits
9 ago? It's the same -- from the same website,
10 Sterling 18. Right there (indicating).

11 A Okay.

12 Q I have some questions about that.

13 If you look at Sterling 18, there's a
14 reference that "The cost for a New York State
15 OCA Criminal History Record Search request is
16 \$65." Do you see that?

17 A Yes.

18 Q Is that what it currently costs Sterling to
19 perform one of these searches?

20 A Yes.

21 Q Has that price changed over the last say two --
22 two or three years?

23 A I don't recall the last price increase. There
24 have been price increases over the years.

25 Q And is that the actual price Sterling pays, or

CURT SCHWALL

1 grab the files from AGCRIM Role Worklist." Do
2 you see that?

3 A Yes.

4 Q What is the AGCRIM Role Worklist that's
5 referenced there?

6 A That's the Argentum CRIM list.

7 Q And it's a list of what?

8 A Of searches to be performed for that
9 jurisdiction.

10 Q So these are searches that have been listed in
11 Argentum from clients of Sterling's, correct?

12 A Yes.

13 Q All right. And correct me if I'm wrong. It
14 refers to a batch of a minimum 50 applicants at
15 a time. Do I read that correctly to mean that
16 the system waits until there are 50 requests
17 that are put in by a client before it does the
18 search?

19 A No.

20 Q Why am I wrong? What is it -- when it says
21 that "We upload the Batch of minimum 50
22 applicants at a time," what does that mean?

23 A That the submission process requires at least
24 50 applicants you'd reference from a client.
25 This would be for clients.

CURT SCHWALL

1 Q So it's not per client, it's just all 50 at a
2 time?

3 A Yes.

4 Q Okay. I got you.

5 And the little -- the screen shot that is
6 underneath that sentence, what is that a screen
7 shot of?

8 MR. O'NEIL: I'm sorry,
9 Mr. Francis. What page are you on?

10 MR. FRANCIS: I'm sorry.
11 The first page of Sterling 23.

12 A Oh. I'm sorry. I'm on page 2.

13 This is a screen shot from our system.

14 Q Okay. Now, is this a screen shot -- if you
15 look at below, there are -- it looks like there
16 are three Order numbers to Order IDs. Do you
17 see that?

18 A Yes.

19 Q Does each one of those Order ID numbers pertain
20 to a particular search that was submitted by a
21 client?

22 A Yes.

23 Q And is the information that is captured within
24 that, those columns, is that the information
25 that the client provides to Sterling for use in

CURT SCHWALL

1 BY MR. FRANCIS:

2 Q Mr. Schwall, before we took a break, I was
3 asking you some questions about the types of
4 information that your staff, operation staff is
5 required to get before returning a public
6 record.

7 Would you turn back to Sterling 19,
8 please?

9 A Sure. Okay.

10 Q In connection with fulfilling a customer's
11 request for a background check, is your -- does
12 your company require that the -- the employee
13 get the Certificate of Disposition like as
14 appears in Sterling 19 before reporting on a
15 record?

16 A No.

17 (Discussion held off the record.)

18 MR. FRANCIS: Would you
19 mark this as -- do you have one for Michael?

20 MS. BRENNAN: Yes.

21 MR. FRANCIS: Would you
22 mark this as -- where are we? 24?

23 THE REPORTER: 24.

24 - - - - -

25 (Sterling Exhibit No. 24 was marked.)

[illegible]

1	2	3	4
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97	98	99	100

[illegible]

25	Q	Go ahead.
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CURT SCHWALL

1 beyond the scope of this Rule 30(b)(6)
2 deposition.

3 Q You can answer.

4 A Yes.

5 Q Do you know who drafted the language that's in
6 that section of the report?

7 MR. O'NEIL: Same
8 objection.

9 A I do not know.

10 Q You agree with me, sir, that Sterling reported
11 four criminal records about Mr. Jones back in
12 July of 2012 to Brown Harris Stevens Group?

13 A There were four reported charges.

14 Q And based upon your review of the documents in
15 this case and your position as a compliance
16 officer, was the reporting of those four
17 charges about Mr. Jones to Halstead in July
18 of 2012 consistent with and compliant with
19 Sterling's procedures for reporting criminal
20 records to employers?

21 A They were compliant at that time.

22 Q Would it not be compliant today?

23 MR. O'NEIL: Objection.
24 Vague.

25 Q You can answer.

CURT SCHWALL

1 MR. O'NEIL: Objection.
2 Misstates the evidence. There is no middle
3 initial in the pages that you refer to,
4 Mr. Francis.

5 MR. FRANCIS: I know that.

6 MR. O'NEIL: Can you
7 repeat -- can you -- Ms. Court Reporter, can
8 you please read back Mr. Francis's question?

9 (Record was read.)

10 Q Correct.

11 MR. O'NEIL: Are you
12 answering your own question or --

13 MR. FRANCIS: No. I'm
14 saying that that's the correct question.

15 A The match for what was provided to us, Kevin no
16 middle initial Jones, is what came back on the
17 record --

18 Q Right.

19 A -- and thus it was reported at that time in
20 compliance with our processes.

21 Q Right. Mr. O'Neil was asking you questions
22 that Halstead or Brown Harris Stevens did not
23 supply a middle initial to you, correct?

24 A That's correct.

25 Q Right. Now, so you're getting Kevin Jones

CURT SCHWALL

1 without a middle initial or a middle name,
2 correct?

3 A The record came back without.

4 Q Right. So if you have concerns, I have somebody
5 with a very common name, first and last name,
6 no middle initial anyway, if you wanted to find
7 out whether or not the charges that were being
8 reported in response to your runner search, you
9 could have gone to the courthouse for each one
10 of those records to see that there was a
11 different middle initial and name, correct?

12 A Yes.

13 Q You could have gone to the County of Erie,
14 State of New York, Village of Lancaster and
15 found the Information/Complaint that showed a
16 Kevin M. Jones, correct?

17 A Yes.

18 Q Okay. You could have gone to the State of New
19 York, Erie County and pulled the Certificate of
20 Disposition to find that there was a Kevin M.
21 Jones with a middle initial, correct?

22 A Correct.

23 Q You could have gone and gotten the actual
24 record which showed you that the middle name
25 was Kevin Morgan Jones, correct?

CURT SCHWALL

1 A Yes.

2 Q But you didn't, correct?

3 A It matched our matching criteria.

4 Q Nobody went and did that, correct? That's my
5 question.

6 A That's correct.

7 MR. FRANCIS: No further
8 question.

9 MR. O'NEIL: I have one
10 more question.

11 - - - - -

12 RE-EXAMINATION OF CURT SCHWALL

13 BY MR. O'NEIL:

14 Q Mr. Schwall, take a look at the indicative
15 information on the pages that Mr. Francis
16 pointed to, and by that I mean the indicative
17 information on the July 2012 report.

18 A Uh-huh.

19 Q In light of Mr. Francis's very exuberant
20 questions to you, do you see any information
21 on these pages that suggests that there is
22 discrepancy in the middle initial?

23 A No.

24 Q Or that there is something that should be
25 investigated?

CURT SCHWALL

1 THE STATE OF OHIO,) SS:
2 COUNTY OF CUYAHOGA.)

3 I, Elaine S. Newlin, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that CURT SCHWALL was
6 first duly sworn to testify the truth, the whole
7 truth and nothing but the truth in the cause
8 aforesaid; that the testimony then given by him
9 was by me reduced to stenotypy in the presence of
10 said witness, afterwards transcribed on a computer/
11 printer, and that the foregoing is a true and
12 correct transcript of the testimony so given by
13 him as aforesaid.

14 I do further certify that this videotaped
15 deposition was taken at the time and place in the
16 foregoing caption specified. I do further certify
17 that I am not a relative, counsel or attorney of
18 either party, or otherwise interested in the event
19 of this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office at Cleveland,
22 Ohio, on this 18th day of November, 2014.

23
24 Elaine S. Newlin, Notary Public
25 Within and for the State of Ohio.
My Commission expires August 22, 2015